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AFIDAVIT OF GARY CROCHET

Gary Crochet, duly sworn, deposes and states as follows:

1. I am the Plaintiff in the above numbered matter.
2. On October 27, 2004, I had a work related injury when I slipped and fell on Barge 450-1.
3. On 11/1/04, I had radiating left arm pain when examined at Valdez Regional Health Authority. Crowley was told that it was a work related injury, and on 11/1/04 I was released "not fit for full duty." (Exhibit #1)
4. In November, 2004, before I was suspended, I did not steal any "stores or food" from the Barge.
5. I sent extra stores into the office because there was no room on the Barge.

LAW OFFICE OF MICHAEL J. PATTERSON
 810 W. 2ND AVENUE
 ANCHORAGE, ALASKA 99501
 SBN: 7806051 PHONE: 907-276-7966 FAX: 907-276-0479

Case No.: A05-288 CV (RRB)
 Crochet v. Crowley

Affidavit of Gary Crochet - Page 2 of 3

Exhibit 1
 Page 2 of 3

Notary Public in and for the State of Alaska
 My Commission Expires: 08-05-06



SUBSCRIBED AND SWORN to before me this 17th day of April, 2006 at Anchorage, Alaska.

Gary Crochet, Plaintiff

Dated this 17 day of April, 2006.

FURTHER AFFIANT SAYETH NAUGHT.

8. I am unable to work at the present time and anticipate that I will have neck surgery.
7. I had back surgery in 2002 from a 2000 work related injury, and other medical problems after I returned to work. After my appendectomy, before this injury, I was told by Crowley management that my medical problems were becoming a concern to "Crowley", and my name was tattooed on management's forehead.
6. I filed a claim with the Alaska Department of Labor. A hearing was held on January 21, 2005. A copy of the Tribunal's decision is attached. At the hearing, the Tribunal decided that the evidence did not support the conclusion that I misappropriated company food. (Exhibit #2).

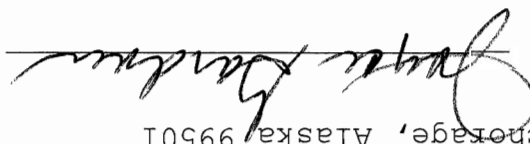
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Affidavit of Gary Crochet - Page 3 of 3
Crochet v. Crowley
Case No.: A05-288 CV (RRB)

I hereby certify that a copy of the
foregoing document was hand-
delivered/mailed to the following on the
18th day of April, 2006:

Douglas R. Davis, Esq.
1029 W. Third Avenue Suite 650
Anchorage, Alaska 99501

by:



Exhibit

Page 3 of 3

White- Employee/Applicant take to clinic (2) Yellow-Homeport Marine Ops (3) Pink- Sr. Administrator- Jacksonville-HR

SEE BACK OF FORM FOR IMPORTANT BILLING AND DRUG TESTING INSTRUCTIONS

Page 1 of 3
Exhibit 1-A
DATE: 11/12/04

REFERRED BY (Print Name):		PHONE NO:		DATE:	
<p>* SPECIAL INSTRUCTIONS/COMMENTS:</p> <p>FIT FOR DUTY (follow-up) - Work Related Injury/Illness</p> <p>FIT FOR DUTY-Non-Work Related Injury</p>					
INJURY/ILLNESS					
OTHER- Periodic, MRO follow-up, DOD, etc					
RETURN TO DUTY					
REASONABLE SUSPICION/CAUSE					
RANDOM					
PRE-EMPLOYMENT					
PRE-ACCESS					
POST ACCIDENT/SERIOUS MARINE INCIDENT					
REASON FOR DRUG/ALCOHOL TEST					
Due Date					
DRUG/ALCOHOL TESTING					
(Reason for testing must be completed)					
BREATH ALCOHOL TEST-FEDERAL- (NON-DOT)					
(Pre-employment, Pre-access, Admin reasonable suspicion/cause)					
BREATH ALCOHOL TEST-FEDERAL-(DOT)					
(FHWA & USCG-Post Accident, Reasonable suspicion/cause only)					
DRUG SCREEN-FEDERAL- (DOT)					
(5 Panel)- (Vessel pre-employment USCG, FHWA Only)					
DRUG SCREEN-FORENSIC- (NON-DOT)					
(5 Panel Only)- (Admin pre-employment, Pre-access, DOD)					
EXAM/SERVICE					
Due Date					
AUDIOGRAM-BASELINE (OSHA)- (first time)					
AUDIOGRAM-ANNUAL (OSHA)					
BENZENE EXAM-BASELINE (first time)					
BENZENE EXAM-ANNUAL					
HEPATITIS B VACCINATION- SHOT#					
PHYSICAL-ANNUAL (DESCRIBE)					
OTHER (Describe)					
IMMUNIZATION (DESCRIBE)					
PHYSICAL-PRE-EMPLOYMENT (A)					
PHYSICAL-PRE-EMPLOYMENT (B)- HepB Shots					
RESPIRATORY QUESTIONNAIRE					
TETANUS SHOT					
EXAM/SERVICE					
Due Date					
EXAM DATE/TIME:					
EMPLOYEE NAME: Crochet Gary					
DOB: 12/12/55					
SSN#: 436-94-9438					
JOB TITLE: EAM/MA					
WORK LOCATION: Barge 450-1					
MEDICAL FACILITY:					

[Form to be completed by Supervisor/Master/HR or ESQA Rep.]

CROWLEY CLINIC REFERRAL FORM



[illegible]

Valdez Regional Health Authority, Inc.
411 South Avenue • P.O. Box 550 • Valdez, AK 99686
907-835-2249 • Fax 907-835-3735

Chief Complaint

① Pain

Time

2315

Date

11-1-24

11/20/11
11/11/2004
FMR

Valdez Medical Clinic

Gary Crochet

11/2/04. Pt here. W/o seen in ER last night by Dr. Kahn (residency concerned about him drinking to much last night. Passed MPT-10 10/6/02.	10/6/02.	P-68
⑦ I am and finger and thumb- Pt told he has pinched nerve		

Page 1 of 6
Exhibit 2-A

Mr. Crochet was responsible for supplying the barge with food. Crews rotated regularly. Depending on weather conditions the trip into port was about four hours. On his last day of work, the ship, the "Endurance," with supplies and rotating new crewmembers was arriving, and crewmembers were rotating off the barge. Mr. Crochet determined that the freezer onboard the ship could not hold the existing food and also the supplies that were about to arrive.

Mr. Crochet began working for the employer in 1994. His last day of work was November 11, 2004. At the end of his employment he worked as mate on a barge. The work was located near Valdez, Alaska.

FINDINGS OF FACT

The interested employer, Crowley Marine Services Inc., by and through its representative of record, UC Express, appealed a December 2, 2004 determination that holds the disqualifying provisions of AS 23.20.379 do not apply to Mr. Crochet's separation from work. The issue is whether the employer discharged Mr. Crochet for misconduct connected with his work.

CASE HISTORY

None

ESD APPEARANCES:

GARY J CROCHET

Lee Aglin
Frosty Leonard

CLAIMANT APPEARANCES:

EMPLOYER APPEARANCES:

GARY J CROCHET
990 N TOM WATSON PL
WASILLA AK 99654

CROWLEY MARINE SVCS
UC EXPRESS
POB 283
SAINT LOUIS MO 63166

CLAIMANT:

EMPLOYER:

Docket No. 05 0002

Hearing Date: January 21, 2005

APPEAL TRIBUNAL DECISION

ALASKA DEPARTMENT OF : OR
AND WORKFORCE DEVELOPMENT
EMPLOYMENT SECURITY DIVISION
P.O. BOX 107023
ANCHORAGE, ALASKA 99510-0723

The employer does not have a written policy concerning excess stores. Mr. Crochet testified that he determined to have the excess supply of perishables distributed by the employer's Valdez office. To that end, he had one of the crewmembers rotating off the barge package up about 35 lbs of meat and shrimp from one of the freezer shelves for delivery to the office. The items were placed in a box. Mr. Crochet also sent along with the crewmember a box of fish that he had himself caught to be taken to the place he was staying in Valdez.

The Endurance left the barge in the early morning of November 11, 2004. The other crewmember had the two boxes with him. At some point, the employer got an anonymous tip that ship food supplies were being stolen off the vessel. Mr. Frosty Leonard, company director of operations in Valdez, met the Endurance when it arrived at the company dock. The crewmember with whom Mr. Crochet had entrusted the fish and food was stopped and questioned about his baggage. It was not clear where he was headed.

He informed Mr. Leonard that he had a box of fish for Mr. Crochet and a box of food for the office. The office has a small freezer. Later that morning, Mr. Crochet was called by satellite phone by Mr. Aglin, the company director of labor relations, and Mr. Leonard. Mr. Crochet had to go to a nearby ship to use their phone.

Mr. Crochet was asked about what he had sent along with the crewmember. He advised them that he had sent a box of fish and also a box of food for the office. He did not advise the employer that he had completed any ship's log entry concerning the food shipment. He was advised to remain on board the second vessel while an investigation continued. Mr. Aglin and Mr. Leonard would call him back in 40 minutes.

Mr. Crochet contended that the phone call was full of static, and that the connection was broken several times. He further contended that he did not hear the direction to stay on board the second vessel.

After the call and against instructions, Mr. Crochet returned to the barge. According to the employer, another crewmember sitting having lunch witnessed Mr. Crochet take the log and modify the 1:30 a.m. entry to include, "Hernandez to office w/over order stores" (Exhibit 10 page 8).

Mr. Crochet disputes the employer's account. He acknowledges returning to the barge (for cigarettes) but insists that he stayed for a very short period of time (three minutes) before returning to the second vessel to await the employer's second

Exhibit 2-1
Page 3 of 6

(B) the act was not justified under AS 11.81.300 - 11.81.450.

(A) the claimant committed the act; and

(3) a preponderance of the evidence establishes that

(2) the felony or theft is "misconduct connected with the insured worker's work" under (d) of this section; and

(1) charges are filed against the claimant or the employer has reported the act to the appropriate law enforcement authority;

(e) A discharge for an act that constitutes commission of a felony or theft will result in a disqualification for benefits under AS 23.20.379(e) if

8 AAC 85.095 provides, in part:

(2) was discharged for misconduct connected with the insured worker's last work...

(a) An insured worker is disqualified for waiting-week credit or benefits for the first week in which the insured worker is unemployed and for the next five weeks of unemployment following that week if the insured worker...

AS 23.20.379 provides, in part:

PROVISIONS OF LAW

This was a union position for Mr. Crochet and he grieved his discharge. As of the date of this hearing, that grievance is still pending.

The employer counters that the log entry concerning the return of food to the office is in different ink than the rest of the entry. They assert also that the crewmember who had been bringing the food back had, while heading over to land, told the Endurance captain that he had two boxes for Mr. Crochet. Mr. Crochet had no explanation for this statement. The employer also asserted that there were other vessels in the vicinity of the barge that had freezers that could have held the excess food. Mr. Crochet admitted he did not think about this possibility.

He insists that the other crewmember was not sitting at the table eating lunch when he returned but was watching TV. He also insists that he did not modify the log with a subsequent entry concerning the return of food to the office.

Exhibit 2-D
Page 4 of 6

When a worker has been discharged, the burden of

states in part:

In Rednal, Comm'r Dec. 86H-UI-213, 8/25/86, the Commissioner

worker's burden to show how and why it was acquired... authorized to have it. In such cases, it is the found to be in the possession of a worker who is not the only evidence of theft is that the property is complained of was in fact done by the worker. Often, problem may lie in determining whether the act acquiring property is discharged for misconduct. The A worker who is discharged for stealing or improperly

140, states in part:

The Employment Security Division's Benefit Policy Manual, Section MC

CONCLUSION

faith errors in judgment or discretion.... ordinary negligence in isolated instances, or good result of inability or incapacity, inadvertence, inefficiency, unsatisfactory performance as the employer's interest does not arise solely from of an employee; willful and wanton disregard of the behavior that the employer has the right to expect deliberate violation or disregard of standards of willful violation of reasonable work rules, or example, through gross or repeated negligence, employer's interest, as a claimant might show, for shows a willful and wanton disregard of the a claimant's conduct on the job, if the conduct (1)

"Misconduct connected with the insured worker's work" as used in AS 23.20.379(a) (2) means (d)

more. the value of the property or service is \$50 or (2) "theft" means an act described in AS 11.46.100, if

AS 11; and (1) "felony" means an act classified as a felony in

(g) For purposes of this section

An acquittal, plea to a lesser charge, or dismissal of charges does not prevent a disqualification for benefits under (e) of this section, if a preponderance of evidence supports that disqualification. (f)

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Exhibit 2-F

The December 2, 2004 determination is **AFFIRMED**. Mr. Crochet remains allowed benefits beginning with the week ending November 20, 2004 through the week ending December 25, 2004. Mr. Crochet's maximum benefit amount is not reduced by three times his weekly benefit amount, and he may still be eligible for extended benefits.

DECISION

The evidence does not support the conclusion that Mr. Crochet misappropriated company food. A disqualification is not in order.

The employer had a right to prevent theft. However, the crewmember heading off the dock with the two boxes of fish and food was intercepted before it was clear he was not heading to the office. Furthermore, the allegation that Mr. Crochet made exculpating amendments to the ship's log after being confronted with charges of possible theft has not been proven by any first-hand testimony. Also, statements allegedly made by the crewmember taking the boxes off the barge to the Endurance captain incriminating Mr. Crochet are not supported by direct testimony either. Finally, Mr. Crochet denies stealing food from the employer.

"When a worker has been discharged, the burden of persuasion rests upon the employer to establish that the worker was discharged for misconduct in connection with the work. In order to bear out that burden, it is necessary that the employer bring forth evidence of a sufficient quantity and quality to establish that misconduct was involved." Rednal, Comm'r Dec. 86H-UI-213, 8/25/86.

In Mendonsa, Comm'r Dec. 04 0577, June 8, 2004, the Commissioner held in part:

persuasion rests upon the employer to establish that the worker was discharged for misconduct in connection with the work. In order to bear out that burden, it is necessary that the employer bring forth evidence of a sufficient quantity and quality to establish that misconduct was involved....

APPEAL RIGHTS

This decision is final unless an appeal is filed to the Commissioner of Labor and Workforce Development within 30 days after the decision is mailed to each party. The appeal period may be extended only if the appeal is delayed for circumstances beyond the party's control. A statement of appeal rights and procedures is enclosed.

Dated and Mailed in Anchorage, Alaska, on January 28, 2005.

Michael Swanson
Michael Swanson, Hearing Officer